

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB 22 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2011-0279-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
CHRISTOPHER WAYNE FRANCIS,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20073878

Honorable Howard Hantman, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines

Tucson  
Attorneys for Respondent

West and Zickerman, P.L.L.C.  
By Anne Elsberry

Tucson  
Attorneys for Petitioner

ESPINOSA, Judge.

¶1 Christopher Francis petitions this court for review of the trial court’s denial of his petition for post-conviction relief brought pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 Francis was convicted after a jury trial of multiple felony offenses related to his involvement in marijuana trafficking. The trial court sentenced him to a combination of concurrent and consecutive prison terms totaling fourteen years. We affirmed his convictions and sentences on appeal. *State v. Francis*, 224 Ariz. 369, 231 P.3d 373 (App. 2010); *State v. Francis*, No. 2 CA-CR 2009-0020 (memorandum decision filed Apr. 22, 2010).

¶3 Francis filed a notice and petition for post-conviction relief, arguing his trial counsel had been ineffective (1) in failing “to meet with and confer with him regarding the status of his case”; (2) by giving inaccurate advice regarding plea offers by the state—specifically, by informing him he likely would receive sentences totaling no more than seven years if convicted and failing to recognize Francis could face a fourteen-year term pursuant to A.R.S. § 13-3419; and (3) by preventing him from testifying. After an evidentiary hearing at which Francis and his trial counsel testified, the trial court denied relief.

¶4 On review, Francis argues the trial court erred in rejecting his claim based on counsel’s purported failure to properly advise him of the benefits of the state’s plea offers in light of the potential sentence under § 13-3419. The court concluded trial counsel had reasonably advised Francis he likely would face sentences totaling seven

years if convicted and, in any event, that Francis had failed to show prejudice. The court found incredible Francis's claim that he would have accepted the state's plea offer if he had been aware his sentences after trial could exceed seven years.

¶5 “To prove ineffective assistance of trial counsel, a petitioner must show both deficient performance and prejudice.” *State v. Donald*, 198 Ariz. 406, ¶ 15, 10 P.3d 1193, 1200 (App. 2000); *see also Strickland v. Washington*, 466 U.S. 668, 687 (1984). And, “a defendant may state a claim for post-conviction relief on the basis that counsel’s ineffective assistance led the defendant to make an uninformed decision to reject a plea bargain and proceed to trial,” because counsel did not provide “information necessary to allow the [defendant] to make an informed decision whether to accept the plea.” *Donald*, 198 Ariz. 406, ¶¶ 14, 16, 10 P.3d at 1200. “To establish prejudice in the rejection of a plea offer, a defendant must show ‘a reasonable probability that, absent his attorney’s deficient advice, he would have accepted the . . . plea offer’ and declined to go forward to trial.” *Id.* ¶ 20, *quoting People v. Curry*, 687 N.E.2d 877, 888 (Ill. 1997) (omission in *Donald*).

¶6 Here, Francis does not identify any error in the trial court’s finding that his testimony was not credible or in its resulting conclusion that he failed to show prejudice. The trial court, not this court, determines the credibility of witnesses, *State v. Ossana*, 199 Ariz. 459, ¶ 7, 18 P.3d 1258, 1260 (App. 2001), and we defer to those determinations, *State v. Moody*, 208 Ariz. 424, ¶ 81, 94 P.3d 1119, 1144 (2004). Thus, Francis has not met his burden of demonstrating the court abused its discretion in rejecting his claim. *See Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d at 948.

¶7

For the reasons stated, although we grant review, relief is denied.

*/s/ Philip G. Espinosa*  
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PHILIP G. ESPINOSA, Judge

CONCURRING:

*/s/ Garye L. Vásquez*  
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GARYE L. VÁSQUEZ, Presiding Judge

*/s/ Virginia C. Kelly*  
\_\_\_\_\_  
VIRGINIA C. KELLY, Judge